

Board of County Commissioners Workshop Request

Date of Meeting: August 30, 2005
Date Submitted: August 24, 2005
To: Honorable Chairman and Members of the Board
From: Parwez Alam, County Administrator
Vincent Long, Assistant County Administrator
Wayne Tedder, Planning Department Director
Subject: Review of Senate Bill 360 (Growth Management Legislation)

Statement Of Issue:

The purpose of this workshop is to provide a presentation to the Board on the new Growth Management Legislation (SB 360).

Background:

During this past session of the Florida Legislature new growth management legislation was passed that potentially has far reaching effects on the way local government manages growth. The act makes school concurrency mandatory, requires a (newly defined) financial feasibility standard and mandates "proportionate fair share mitigation" ordinances which will provide development a choice for satisfying school and transportation concurrency requirements. The Act also includes some increased funding for infrastructure improvements. The Bill was signed by the Governor on June 24, and became effective on July 1.

Concurrency

While concurrency remains a required and valid consideration of the development approval process, "proportionate fair share mitigation" shifts the issue more towards what a development that is constrained by a level of service (LOS) concurrency deficiency may do to mitigate the impacts directly attributable to the development. Essentially, the new legislation says that development permits cannot be denied if the development pays its "fair share" of the cost to mitigate its impacts. However, this provision is implemented under the umbrella of "Financial Feasibility" (see below). The apparent result of these provisions is that development that results in a constrained LOS may have a greater likelihood of approval but, that approval will be more costly if the development must opt to pay their fair share to address a concurrency deficiency.

Each local government must adopt a methodology for assessing transportation proportionate fair share mitigation options by December 1, 2006. A developer may choose to satisfy transportation and eventually, school concurrency requirements by contributing or paying proportionate fair-share mitigation for those facilities or segments that are identified in the 5-year schedule of capital improvements. Updates to the 5-year schedule may not be found not in compliance by the

state land planning agency if additional contributions or payments are reasonably anticipated during a 10-year period to fully mitigate impacts on the transportation facilities. If the funds in an adopted 5-year schedule are insufficient to fully fund construction of the transportation improvements required by the local government's transportation concurrency management system, the local government may still enter into a binding proportionate share agreement with the developer.

By December 1, 2005, FDOT is to develop a "model" ordinance for local governments to use in developing their transportation proportionate share ordinance. While it should be noted that the County has adopted a form of proportionate fair share policies, it is anticipated that TLCPD working with Growth and Environmental Management will bring the model to the Board sometime after January 2006 for policy discussion in anticipation of the Growth and Environmental Management Department preparing a County ordinance that will incorporate proportionate fair share provisions in the existing concurrency program in full compliance with SB 360. It is also anticipated that an interlocal government agreement on fund distribution will be necessary to appropriately allocate collected funds among the jurisdictions (County, City and State).

Financial Feasibility

Specifically, the bill requires a local government's comprehensive plan to be financially feasible and the capital improvements element in a local comprehensive plan to include a schedule of improvements that ensure the adopted level-of-service standards are achieved and maintained. Also, by December 1, 2007, it will require an annual review of the capital improvements element to maintain a financially feasible 5-year schedule of capital improvements. Capital improvements element amendments must be adopted and transmitted to Florida Department of Community Affairs (FDCA). The bill now provides for sanctions if the amendment and subsequent updates are not transmitted timely. Presently, the County transmits their 5-year schedule of capital improvements prepared by the County Office of Management and Budget (OMB) to FDCA as an amendment to the Capital Improvements element of the Comprehensive Plan. However, the issue of financial feasibility must be scrutinized to make sure the CIE meets the new standards. There will be upcoming training sessions by FDCA on this issue that staff should attend to better understand the requirements of financial feasibility.

As the county is in the process of submitting this year's CIE comprehensive plan amendment, it is suggested FDCA be requested to provide an informal review of our submittal in accordance with the new provisions.

The definition of Financial Feasibility is: "sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a capital improvement schedule . . ."

The definition goes on to say that the requirement to achieve LOS standards shall not apply to a development for which local government uses the proportionate share process.

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All future map amendments will be required to demonstrate that sufficient roadway and school capacity are in place or are planned for and contained in the 5 year CIE. If not the amendment will not be approved.

School Planning

The act requires the adoption of a public schools element, an inter-local agreement with required provisions, a five year Capital Improvements Schedule and the establishment of mandatory school concurrency requirements. School capacity (LOS standards) may be applied on a district wide basis for the first five years then must be reduced to a smaller area such as attendance zones. Concurrency must be enforced as in the transportation provision to include proportionate fair share mitigation.

Currently there are no requirements in the Comprehensive Plan for school concurrency. The Comprehensive Plan will be required to include provisions, by September 1, 2008, for concurrency and incorporate the School districts CIE. Staff recommends that the school board be charged with completion and implementation of these tasks (concurrency management system, update of the education element and CIE).

The present agreement with the School Board, County Commission and City Commission was adopted in 2003 in accordance with the requirements that existed in state statutes at that time. This agreement is required to be updated by September 1, 2008 to incorporate new provisions. By necessity, to be able to update the Comprehensive Plan, and CIE and create a concurrency system an updated agreement should be completed relatively quickly. The State is providing funding incentives for completing the agreement by September 1, 2006 (Minimum of \$10,500 for Leon County). We are recommending that Leon County participate in this early completion schedule for the updated interlocal agreement. The Planning Department should be designated as responsible for drafting, with school board staff assistance, the updated agreement for review and final adoption by each board. The new issue that must be addressed in the interlocal agreement is a proportionate share methodology. This appears to require agreement on the definition of capacity and what can be provided by development to mitigate any instance where development will exceed capacity. There is a tremendous potential to significantly lengthen the development review and approval process if procedural issues are not satisfactorily addressed. In order to ensure timely review and approval of development applications, the Planning Department is recommending that the interlocal agreement provide appropriate procedures for the operation of the school's concurrency management program, responsible parties for working with developers, procedures for processing applications, and who will be the ultimate decision makers. These issues should not be addressed in the Comprehensive Plan. The Comprehensive Plan should only provide the guiding policies of the new requirements.

Water Supply Planning

The act also provides that "adequate water supplies" are a required public facility for concurrency purposes. It requires coordination with the regional water supply authorities and the adoption of a water supply plan. There are no provisions for proportionate fair share mitigation. How this will

apply to permitting potable water wells is unclear but, it is expected that policy to address that issue will be necessary in the water supply plans.

Other Provisions

Vision Statement - A local government is encouraged to develop a community vision. The process of developing a community vision requires the local government to hold a workshop with stakeholders and two public hearings. A vision statement that meets the requirements of the new statutes, both in content and process is required in order to establish an Urban Service Boundary (USB) (*see below*). During this cycle of Comprehensive Plan amendments we are attempting through some formatting changes to the existing vision statement and other existing policy issues to create an acceptable vision statement meeting the new requirements. At some future date, after we can sort through all the new initiatives and standards, staff will need policy direction on whether to proceed with a USB designation. Most likely this will be a city commission initiated directive.

Urban Service Boundary - A local government is encouraged to adopt an urban service boundary (USB). This area must be appropriate for compact, contiguous urban development within a financially feasible 10-year planning timeframe. The establishment of a USB does not preclude development outside the boundary. A USB is the only way a local government may extract at least part of its jurisdiction from the onerous large scale Comprehensive Plan amendment process.

Although we can have both an Urban Service Area (USA) and a USB, we cannot assume that our existing USA will, or can, become the USB because of the 10-year financially feasible requirement and the requirement that the area of the USB may not exceed the projected 10-year population needs. As an additional incentive, development within an urban service boundary is exempt from development-of-regional-impact review if the local government has entered into a binding agreement with certain jurisdictions and the FDOT regarding the mitigation of certain impacts and has adopted a proportionate share methodology. Furthermore, any land development proposed outside of the USB is encouraged to prepare a "full-cost accounting analysis - which has not been defined but, presumably means incorporating an economic impact analysis evaluation into the approval process.

EAR Changes - The bill also addresses the Evaluation And Appraisal Report (EAR) process under s. 163.3191, F.S. Amendments to update a comprehensive plan based on an EAR must be adopted during a single amendment cycle within 18 months after the report is determined to be sufficient by the state land planning agency. Beginning July 1, 2006 (prior to the Leon County EAR deadline), failure to timely adopt and transmit update amendments to the comprehensive plan based on the EAR shall result in a prohibition on plan amendments until the EAR-based amendments are adopted and transmitted to the state land planning agency. *This will apply to Tallahassee/Leon County at the conclusion of the EAR process we are presently proceeding with. It is a significant reason to limit our EAR issues to four or five. The eighteen-month time frame for submitting all EAR based amendments will only permit nine months of actual preparation time prior to the review process that is required for adoption. The number and magnitude of the 7 issues identified in the EAR process could significantly limit the Planning Department's ability*

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to accomplish other planning tasks assigned by the Board and City Commission until late July 2008 when the Comprehensive Plan amendments required by the EAR process will be transmitted to FDCA.

There are also provisions for qualifying Transportation Exception Areas, limits on the application of "de minimis" provisions (total of 110%), allowances for long-term (10+ years) schedules of capital improvements and funding allocations for the transportation and school improvement requirements.

Attachment #1 provides a summary of tasks required and suggested by SB 360 together with staffs' recommendation for who will be the lead department/agency.

Options:

1. Accept report
2. Board Direction.

Recommendation:

Options #1

Attachments

Attachment #1: Timeline for SB 360 task accomplishments

PA/VL/WT/FG/cg

Timeline of SB360 effective dates and deadlines

When to deadline	What	Who
	<p>Adoption of an optional visioning process, including:</p> <ul style="list-style-type: none"> the community's shared concept for growth and development; visual representations depicting the desired land-use patterns and character during a 10-year planning timeframe; and consideration of economic viability and private property interests. <p><i>Bonus:</i> a local government that has adopted a community vision and urban service boundary may adopt map amendments solely to property within an urban service boundary such that DCA and RPC review of Comp Plan amendments is eliminated.</p>	TLCPD
No deadline	<p>Adoption of an optional urban service boundary (USB):</p> <ul style="list-style-type: none"> must then secure determination from DCA that the urban service boundary substantially complies with criteria (DCA's determination is not subject to administrative challenge) 	TLCPD
Requirement goes into effect 7-1-06. Impact on Tallahassee/ Leon County will be after EAR is found sufficient.	<p>Amendments to update comp plan based on the EAR must be adopted during a single amendment cycle within 18 months after EAR is determined to be sufficient by DCA</p> <ul style="list-style-type: none"> DCA may grant a 6-month extension for the adoption of such amendments if the request is justified by good and sufficient cause An additional extension may also be granted if the request will result in greater coordination between transportation and land use. <p><i>Penalty:</i> no amendments to future land use map allowed (except to meet new requirements).</p>	TLCPD
late 2008 7-1-06	<p>Optional Multimodal transportation districts:</p> <p>Multimodal districts existing prior to 7-1-05 must meet new provisions (alternative</p>	<p>NO impact on Tallahassee/ Leon County does not</p>

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	<p>modes).</p> <p>Multimodal process:</p> <ul style="list-style-type: none"> • may be established in areas delineated on FLUM with secondary priority to vehicle mobility and primary priority to pedestrians and convenient transit. • community design features that will reduce the number of auto trips or vehicle miles of travel • supports an integrated, multimodal transportation system. • Prior to designation, FDOT must be consulted to assess the impact that the proposed multimodal district area is expected to have on the adopted level of service standards. • Local government must cooperate with FDOT to develop mitigation plan for impacts to SIS, including possible development of a long-term CMS. 	have Multimodal districts
7-1-06	<p>Transportation concurrency exception areas:</p> <ul style="list-style-type: none"> • TCEAs existing prior to 7-1-05 must meet the new provisions (alternative modes). 	City/County Growth Management Depts.
7-1-06	<p>Transportation concurrency management areas:</p> <p>TCMAs existing prior to 7-1-05 must meet new provisions (alternative modes).</p> <p>TCMA process:</p> <ul style="list-style-type: none"> • a compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips • local government may establish areawide level-of-service standard • Prior to designation, FDOT must be consulted to assess the impact that the proposed TCMA is expected to have on the adopted level of service standards. 	<p>City/County Growth Management Depts.</p> <p>Tallahassee/ Leon County does not have TCMAs</p>

	<ul style="list-style-type: none"> Local government must cooperate with FDOT to develop mitigation plan for impacts to SIS, including possible development of a long-term CMS 	City/County Growth Management Depts.
12-1-06	<p>Adopt ordinance for a methodology to assess proportionate fair-share mitigation options.</p> <ul style="list-style-type: none"> FDOT to develop model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options by 12-1-05 <p>Transportation Concurrency Management System:</p> <p>Include methodologies that will be applied to calculate proportionate fair-share mitigation.</p> <ul style="list-style-type: none"> Developer may choose to satisfy transportation concurrency requirements by paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year CIP schedule or the long-term concurrency management system Updates to the 5-year CIP reflecting proportionate fair-share contributions may not be found not in compliance if additional payments are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities. <p>Capital Improvements Element:</p> <ul style="list-style-type: none"> Annually modified to maintain a financially feasible 5-year schedule.* Amendment is required to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule. <p><i>Penalty:</i> no amendments to future land use map allowed (except to meet new requirements) until each annual update transmitted to DCA.</p>	City/County Growth Management Depts.
12-1-06		City/County Growth Management Depts.
12-1-07	<p>Tallahassee/ Leon County is presently meeting the annual submission standard. Must evaluate Financial Feasibility* issue.</p>	City & County OMBs, Talquin, TLCPD

9-1-08	<p>Adoption of Public School Facilities Element</p> <ul style="list-style-type: none"> Plan amendments to adopt a public school facilities element exempt from twice-per-year limit <p>Required update to the public schools interlocal agreement</p> <p><i>Penalty:</i> no amendments allowed to Comp Plan that increase density until amendments adopted and transmitted to DCA. Withholding of funds from School Board.</p>	<p>LCS</p> <hr/> <p>TLCPPD</p>
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*"Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. The requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate-share process set forth in s. 163.3180(12) and (16) is used.